

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

DELIVERMED HOLDINGS, LLC,
WILLIAM R. DEETER ASSOCIATES, INC.,
and LINDA DEETER

Plaintiffs,

v.

MICHAEL L. SCHALTENBRAND, JOEY D.
SIDDLE, and MEDICATE PHARMACY, INC.,

Defendants,

MARK A. SWIFT,

Plaintiff,

v.

MICHAEL L. SCHALTENBRAND, JOEY D.
SIDDLE, and MEDICATE PHARMACY, INC.,

Defendants.

Case No. 10-cv-684-JPG-DGW

consolidated with

Case No. 10-cv-685-JPG-DGW

**RESPONSE OF THE REGISTER OF COPYRIGHTS
TO REQUEST PURSUANT TO 17 U.S.C. § 411(b)(2)**

On November 4, 2013, pursuant to 17 U.S.C. § 411(b)(2), the Court requested advice from the Register of Copyrights (“Register”) by December 20, 2013, on the following question (the “Request”):

Would the Register of Copyrights have refused DeliverMed’s Registration No. VA 1-766-676 for 2-D artwork (“DeliverMed house and pestle logo,” filed April 1, 2011, registered April 9, 2011) if the Register of Copyrights had known that Swift, on behalf of DeliverMed, had intentionally misrepresented (1) that Linda Deeter was the author of the work and/or (2) that Deeter had transferred her copyright to DeliverMed by written agreement?

Because the Register did not receive a copy of the Court's Request until January 9, 2014, the Register requested, and the Court granted, an extension to respond to the Request until January 23, 2014.

The Register hereby submits her response. For the reasons set forth below, had the Register been aware of either of the misrepresentations identified by the Court, the Office would have refused registration for the work in question.

BACKGROUND

On April 9, 2011, the Copyright Office received an application (the "Application") to register a work titled "DeliverMed house and pestle logo" (the "Work"). The Application identified Linda Deeter as the author of the Work and DeliverMed Holdings, LLC ("DeliverMed") as the copyright claimant, and stated that the Work was a work made for hire. It indicated that Ms. Deeter had created "2-D artwork" comprising the Work and represented that DeliverMed had obtained the copyright in this Work "by written agreement."

Based on the information provided, the Office had no reason to question the representations in the Application and accepted them as true and accurate. The Office registered DeliverMed's claim on April 11, 2011, and assigned registration number VA 1-766-676 to the certificate of registration. The registration is effective as of April 9, 2011, which is the date that the Office received the Application, deposit copy, and filing fee.

In its Request, the Court informed the Register that the defendants/counterclaimants "have proven at trial that plaintiff/counterdefendant DeliverMed Holdings, LLC ('DeliverMed'), via its agent plaintiff/counterdefendant Mark A. Swift, knowingly submitted inaccurate information when it applied for a copyright: Registration No. VA 1-766-676" in a work titled "DeliverMed house and pestle logo." Request at 1. The Court has requested the Register to consider whether an intentional misrepresentation in the Application concerning the author of the Work and/or an intentional misrepresentation concerning the transfer of the Work by the author to DeliverMed would have affected the Register's decision to issue a registration for the Work to DeliverMed.

THE REGISTER’S RESPONSE

An application for copyright registration must comply with the statutory requirements outlined in 17 U.S.C. §§ 408(a), 409, and 410. In pertinent part, the statutory requirements for copyright registration provide that an application shall include (i) “the name . . . of the author or authors,” (ii) “in the case of a work made for hire, a statement to this effect,” (iii) “the name and address of the copyright claimant,” and (iv) “if the copyright claimant is not the author, a brief statement of how the claimant obtained ownership of the copyright.” 17 U.S.C. § 409.

Regulations governing the submission of applications are codified in title 37 of the Code of Federal Regulations. Section 202.3(a)(3) of the regulations explains that the term “claimant” means either “[t]he author of a work” or “[a] person or organization that has obtained ownership of all rights under the copyright initially belonging to the author.” A footnote to this section of the regulations states that “[t]his category includes a person or organization that has obtained, from the author or from an entity that has obtained ownership of all rights under the copyright initially belonging to the author, the contractual right to claim legal title to the copyright in an application for copyright registration.” 37 C.F.R. § 202.3(a)(3) n.1.

Based on the governing statutory and regulatory standards, had the Office been aware either that (i) Ms. Deeter was not in fact the author of the Work, and/or (ii) as of the date the Application, Ms. Deeter had not transferred an interest in the Work by written agreement to DeliverMed, the Register would have refused to register the Work in response to the Application, as each of these elements was necessary and material to establish DeliverMed’s claim of copyright ownership in the Work.

Respectfully submitted,

A handwritten signature in black ink that reads "Maria A. Pallante". The signature is written in a cursive, flowing style.

Dated: January 23, 2013

Maria A. Pallante
Register of Copyrights and
Director of the U.S. Copyright Office

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CERTIFICATE OF SERVICE

I certify that a copy of the Response of the Register of Copyrights to Request Pursuant to 17 U.S.C. § 411(b)(2) was mailed to the person(s) listed below on January 23, 2014.

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